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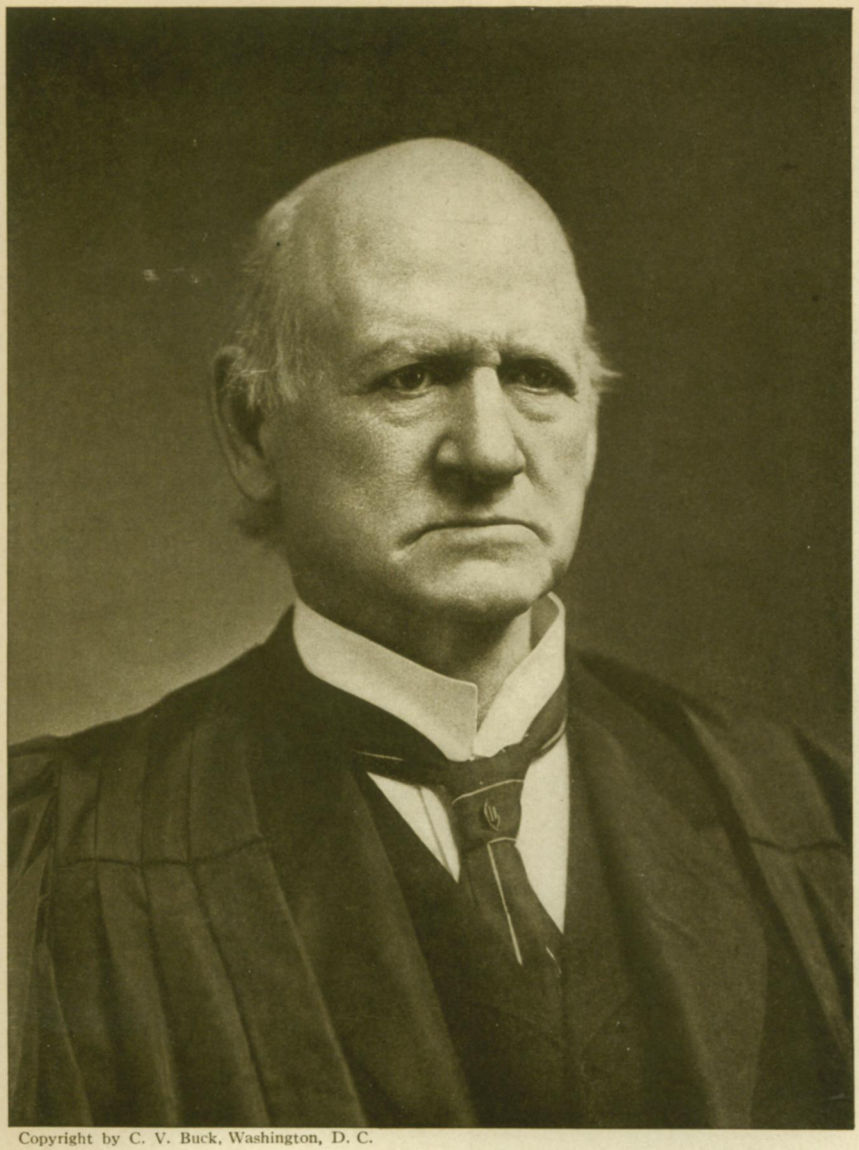

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John M. Harlan

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# A TRIBUTE TO MR. JUSTICE HARLAN

BY EDWARD DOUGLASS WHITE, THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT

MR. ATTORNEY-GENERAL, your words go home to our hearts and the resolutions of our brethren of the bar move us, since they show both the confidence which the bar reposed in and the affection they bore Mr. Justice Harlan, as well as the veneration they cherish for his memory. The depth with which these feelings are by us shared and the greatness of the sorrow which has come to us by the death of our brother cannot be appreciated without understanding how completely the discharge of judicial duty in a court of last resort necessitates an effort by all to efface every merely incidental mental and moral tendency to difference of opinion in order that by the perfect equipoise of mind with mind and the union of heart with heart, a composite, wise, and just judgment may result.

The disintegration by death of the union resulting from such ties of intimate and affectionate association brings with it not only bereavement, but a sense of despondency, because of the fleeting and perishable result of all human efforts which it apparently exemplifies. The contemplation, however, of the great life which we commemorate dispels

NOTE.—A eulogy pronounced in reply to resolutions passed by the members of the bar of the Supreme Court of the United States and presented by the Attorney-General on Monday, Jan. 29, 1911.

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the miasma of despondency and calls us to the onward and upward struggle for higher and holier things, since, when rightly measured, the lessons of that life point to the continuing and enduring result for good of duty conscientiously performed. Through the mists of parting and the shadows of death itself, clearing our vision by the light which that life affords, we are enabled to see how greatly the dedication of the life of our Brother Harlan to the service of his country, during nearly thirty-four years of judicial labor, serves to sustain and to make fruitful for the benefit of all his countrymen the power for good of that ideal and undying personality, the Supreme Court of the United States, the offspring of the devotion of our forefathers to human liberty and their genius in creating institutions for its perpetuation. So noble in conception and yet so simple in execution; so ordinary in its incidents and yet so majestic as the servant of the whole people; so weak and yet so strong, because founded upon the affection of all the people and depending for its existence upon their continued support.

It would not be appropriate on this occasion, nor is there presently time, Mr. Attorney-General, to afford the opportunity to add to the condensed statement which you have made of the career of Mr. Justice Harlan by giving an outline of his services in peace and in war. I shall, therefore, leaving the general subject to some more appropriate occasion, seek only now to depict in the briefest manner some of the most dominant of the moral and mental forces which characterized Mr. Justice Harlan's discharge of judicial duty, as seen from the angle of vision of those engaged with him in such duty, thus, perhaps, speaking from a point of observation which, if not stated now, might possibly pass out of view.

In the first place, there was ever manifested the supreme importance which he attached to the performance of his judicial work and the consequent dedication which followed of every mental and moral faculty of his being to the doing of that work. In the second place, there was likewise consequently manifested a purpose to do justice as it was given him to see it, a justice not resting upon mere metaphysical conceptions or distinctions of casuistry concerning the lines of separation between right and wrong, but a justice based upon what seemed to him to be a common sense of justice,

begetting an ever-present and vivid purpose to uphold the right and to frustrate the wrong and ever to see to it that the weak were not overmastered by the strong. In the third place—and this was the most prominent of all—he possessed a reverence for and an implicit faith in our constitutional institutions, a faith which knew no doubt and caused him to believe that the power of adaptability of those institutions was adequate to meet and provide for any possible condition, however complex or novel. And as these dominant qualities were potential in giving shape and form to his mental attributes, the latter in substance were but the reflex of the former. His methods of thought, in disregard of mere subtleties or refined distinctions, led him to the broadest lines of conviction, and as those lines were by him discerned, and differences between himself and others became impossible of reconciliation, the warfare of mind with mind was by him carried on, not with adroit fence or subtle play of reason, but with a directness and entire disregard of all narrower points of view. This was particularly observable with reference to his conclusions on questions concerning powers of government arising from constitutional limitations and the consideration of asserted violations of the rights of individuals protected by such limitations. Once his convictions were definitely formed, so complete was his faith, so ardent was his devotion, so unalterable was his purpose to maintain and perpetuate in each and every particular, as he understood it, the Government under the Constitution which he so much loved, that sometimes the very ardor and zeal with which, when he differed from others, the form in which the reason for his differences was expounded produced upon the merely superficial observer the impression that there was doubt on his part as to the power of the Constitution, if interpreted in conflict with the views which he held, to successfully continue to accomplish the great purpose which it was ordained to secure; but this was indeed a singularly mistaken view, since it engendered doubt and weakness merely because of the forms in which supreme and perfect faith had found their expression.

It being true, as I have said, that the lessons afforded by the life of the great American whose loss we commemorate and deplore afford a correction of despondency and constitute an incentive, calling upon all to dedicate their

lives to a higher and completer fulfilment of duty, why is it not also true that a right contemplation of that life and its results will serve in some measure to assuage the feeling of sorrow begotten by his death? It was given him to exceed the allotted span of mortal existence, and during his long and useful career to faithfully serve, in war and in peace, his country; to win the affection of all his countrymen; and to afford an elevating and noble example of duty well and faithfully performed. Ah! contemplating that life, its simplicity, its courage, its devotion to duty, its love of country, does not the faith come to us that in the transition from things finite to things infinite it has been given to him to hear the ineffable melody of those words of benediction, the hope of hearing which has led so many millions to consecrate their lives to the performance of duty and the service of God and their country—"Well done, thou good and faithful servant."

EDWARD DOUGLASS WHITE.